IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2729 OF 2002.

M/s. Imtivaz Marine Products Processors
Trading (P) Ltd. **Petitioner**.

Vs.

The State of Maharashtra & Ors. **Respondent**s.

Mr. Y. T. John a/w Peter Lobo i/b S.R. Borulkar
for the Petitioner.

Mrs. S.M. Dandekar A.G.P., for Respondent
no.1. Mr. P.P. Chavan a/w Kiran Gandhi i/b
Little & Co.for respondent No. 2,4,5 & 6.

CORAM : S.U. KAMDAR, J.
DATE : MARCH 28 2006.

P.C.

. The present petition is filed challenging the disconnection notice, dated 8th October,2002 issued by respondent no.6 and also the impugned order dated 4.1.2002 passed by respondent no. 3, in so far as it alters the period of assessment from as 21.11.997 to 16.12.1998 and substituted by enhanced period of assessment as 16.8. 1996 to 16.12.1998.

1. Some of the facts of the present petition, are briefly enumerated, as under;

2. The petitioner-company is a High Tension (HT) Power consumer of the Maharashtra State Electricity Board. The petitioner- company is engaged in Ice

Manufacturing at Taloja, Dist. Raigad and carrying on business since 16th August, 1996. They have entered into a contract for electricity demand of 292 KVA and connected load of 350 KW of the electricity connection.

3. It is the case of the petitioner that sometime in or about 16/12/1998 on a complaint, Flying Squad M.S.E.B.,staff visited the premises of the petitioner company and carried out inspection of meter and when it was found that the petitioners were engaged in theft of power. The proceedings thereafter were initiated in the Criminal Court.

4. It is the case of the petitioner that after doing surprise check on 16.12.1998 the provisional assessment was carried out of the elctricity supply for the period 18/8/1996 to 16/10/1998 and demand was made to Rs. 1,72,10,444.31 ps., against the petitioner. The petitioner thereafter filed writ petition being No. 7199 of 1998 wherein the petitioner was directed to pay Rs.15,00,000/-. However, the petitioner did not pursue the said writ petition and availed the alternate remedy in the form of appeal under the terms and conditions of Electricity Supplies.

5. After hearing the petitioner,the Respondent no. 5 passed an order taking assessment period as 22.11.97 to 16.12.98 and assessed maximum demand as 292 KVA and directed the petitioner to pay in accordance with said demand.

6. Being aggrieved by the said order, the petitioner preferred an appeal. However, the respondent accepted the said order and revised the demand in accordance thereof. On 7.1.1999 petitioner was intimated to pay Rs. 65.77 lacs as per the order of respondent no.5. Thereafter, the petitioner was informed that there was an error in working out the amount and actual amount of the final bill as per the Chief Engineer's order is Rs. 40,40,712.94. Being aggrieved by the said final assessment of 40.4 lacs, the petitioner preferred an appeal before the Special Committee, i.e., respondent no.3 in accordance with the condition no. 31 (e) of the Terms and Conditions of Power Supply of M.S.E.B. The said appeal was heard by respondent no.3 and the Appellate Authority while confirming the order of the Chief Enginneer also enhanced the period of assessement which was fixed by the Chief Enginneer as 21.11.1997 to 16.12.1998 to 16.8.1996 to 16.12.1998 and directed the petitioner to pay the amount accordingly. The said order was passed on 27.9.2000. However, the Appellate Authority while

passing the said order reduced contract demand as maximum demand for the purpose of working out energy consumption and also made correction in respect of the load in terms of the revised order by the Appellate Authority. The petitioner was directed to pay revised amount of the assessment at Rs. 35,86,113.56 paise.

7. Being aggrieved by the fact that the Appellate Authority enhanced the assessment period which was 21.11.1997 to 16.12.1998 to 16.8.1996 to 16.12.1998, the petitioner filed a review and also sought that in view of the Circular No. 129 petitioner must be given a benefit of lean and peak season, since the petitioner was carrying business of ice factory.

8. By an order dated 8th November, 2001, the Appellate Authority in the review has given benefit to the petitioner of the Circular No.129 dated 15/4/1991 and reduced consumption recorded but at the same time has maintained the enhanced period of assessment as 16.8.1996 to 16.12.1998 instead of 22.11.1997 to 16.12.1998 as provided by Chief Engineer while finalising the assessment of electricity consumption.

9. It is this said order passed on the review application by the Appellate Authority dated 4.1.2002 is under challenge before me.

10. The only contention raised by the learned counsel appearing for the petitioner is that when on the record of Inspection maintained by the Board an inspection was carried out on 22.11.1997 by Executive Engineer, Vashi and after checking everything, report has been given that the functioning of the meter as well as connections are in order and satisfactory, then in that event order of the Chief Engineer, fixing the period of assessment as 22.11.1997 to 16.12.1998 should not to have been altered by the Appellate Authority and that also in an appeal preferred by the petitioner and not by the respondent. It has been thus contended that power exercised by the Appellate Authority of enhancement of the period from 22.11.1997 to 16.12.1998 to 16.8.1996 to 16.12.1998 is totally erroneous and without any merits. The learned counsel for the respondents has, on the other hand, contended that it is true that there has been an inspection on 22-11-1997 and the report of the authority indicates that there was no theft of the power consumption because meter as well connections were found in order at the time of checking. But in the light of the fact that there are fluctuations in meter reading, even for earlier period, the Appellate Authority has altered the said assessment period from 22.11.1997 to 16.12.1998 to 16.8.1996 to 16.12.1998. It has been,therefore, contended that the Appellate Authority's order is not required to be interfered

with by this Court in this Writ petition. Firstly, in my view, the order passed by the Appellate Authority enhancing the assessment is totally erroneous, because the record of Authorities, itself, shows that upto the date of 25.11.1997 to 16.12.1998 there was no question of any theft of electricity on the report of the respondents themselves. In that circumstances, it was not open to the Appellate Authority to increase the assessment period without taking into consideration the record which was before the Chief Engineer and is not disputed. In any event, in my view, the order of the Chief Engineer did not require any interference because the appellate authority could not have altered the assessment period of their own without respondents challenging the order passed by the Chief Engineer In this view of the matter, I am of the opinion, that the order of the Appellate Authority dated 4/1/2002 is required to be quashed and set aside to the extent of enhancement of period as 16.8.1996 to 16.12.1998 instead 21.11.1997 to 16.12.1998. The order is accordingly quashed to the aforesaid extent. Rest of the order is maintained. The Board is directed to recompute electricity charges on the basis of the aforesaid period and levy charges from the petitioner accordingly.

11. The amount deposited by the petitioner in the

present petition will be available to the respondents for adjustment in accordance with the aforesaid directions.

12. Petition disposed of accordingly in aforesaid terms.